authorities cited or the principles enunciated therein which I favour.

Before leaving this case, I might mention that quite a few of the authorities referred to in this judgment were not cited by either counsel but I felt obliged to do so as they were, in my opinion, essential for the proper clarification and determination of the factual and legal issues in the case.

Order accordingly.

Solicitors: *Mathuram & Co.; Thillaimuthu & Phock Kin.*

Appendix A

"CORAM: THE HONOURABLE TAN SRI DATO' ABDUL HAMID BIN HJ. OMAR, CHIEF JUSTICE MALAYA THE HONOURABLE TAN SRI DATO' HJ. MOHD AZMI BIN DATO' HJ. KAMARUDDIN, S.C.J. THE HONOURABLE DATUK SYED AGIL BIN SYED HASSAN BARAKBAH, S.C.J.

ORDER

THIS APPEAL coming on for hearing on the 20th day of November, 1985 in the presence of Mr S. Thillaimuthu of counsel for the Appellants abovenamed and Mr R.J. Manecksha (Mr S.J.D. MATHURAM with him) of counsel for the Respondents abovenamed *AND UPON READING* the record of appeal filed herein *AND UPON HEARING* counsel as aforesaid *IT IS ORDERED* that the Appellants' appeal against the Amended Order dated the 4th day of July, 1984 of the Honourable Edgar Joseph Jr. J. awarding the first-named Respondent the sum of $5,616/- for loss of 1872 square feet of land valued at $3/- per square foot and interest at 6% per annum calculated from the date of service of the writ to date of payment on total sum of $80,366/- be and is hereby set aside and *IT IS ALSO ORDERED* that the Appellants do pay this Respondent the sum of $74,750.00 with interest thereon at 8% per annum calculated from the date of judgment to the date of payment, *AND IT IS FURTHER ORDERED* that the said order of the Honourable Edgar Joseph Jr, J. awarding the second-named Respondent the sum of $23,729/- being the value of a similar new shop-house, the further sum of $1,250/- being the costs of demolition charges and agreed special damages of $450/- do stand but that the award of interest calculated at 6% per annum on the sum of $23,729/- from the date of service of the writ to date of payment be and is hereby set aside and this Respondent be allowed interest on the total sum of $25,429/- calculated at 8% per annum from the date of judgment to date of payment *AND IT IS LASTLY ORDERED* that the costs of this appeal be taxed and the Appellants do pay the Respondents one-half of such taxed costs and that the sum of $500/- deposited by the Appellants into Court as security for costs of the appeal be paid out to the Respondent on account of taxed costs.

GIVEN under my hand and the seal of the Court this 20th day of November, 1985.

SGD. SOO AI LIN
SENIOR ASSISTANT REGISTRAR,
SUPREME COURT, MALAYSIA,
KUALA LUMPUR."

SENG LOONG TRADING CO. v. ANGEL DEPARTMENT STORES SDN. BHD.

[O.C.J. (Gunn Chit Tuan J.) July 23, 1985, August 21, 1985, October 29, 1985, November 12, 1985]

[Kuala Lumpur – Civil Suit No. C3266 of 1985]

Practice and Procedure – Writ of Summons and service – Application to set aside – Whether time limited for appearance is irregular – R.H.C. 1980, O.12 r.4.

The defendant applied by Summons-in-Chambers for an order to set aside a Writ of Summons and service thereof on the ground that the time limited for appearance within eight days was irregular and did not comply with Order 12 rule 4 of the Rules of the High Court 1980. The plaintiff referred to the meaning of local jurisdiction in section 3 of the Courts of Judicature Act 1964 and contended that the time limited for appearance was regular because the expression "local jurisdiction" of each High Court in Malaya in Order 12 rule 4(a) of the Rules of the High Court 1980 means the territory comprised in the States of Malaya including, in this case, the State of Penang where the defendant is carrying on its principal business.

Held: (1) the expression "local jurisdiction" is not defined in Order 12 rule 4 and one cannot for the purpose of construing the provisions of the Rules of the High Court 1980, refer to the meaning assigned to that expression in the Courts of Judicature Act, 1964;

(2) for purposes of Order 12 rule 4 of the Rules of the High Court 1980, the expression "local jurisdiction" of this High Court in Malaya means the territory comprised in the State of Selangor and the Federal Territory of Kuala Lumpur, and cannot include the other states of West Malaysia;

(3) the said Writ and the service thereof shall be set aside with liberty to the plaintiff to file a fresh suit.

CIVIL SUIT.

N. H. Wong for the plaintiff.

P. C. Low (*Ang San Hai* with him) for the defendant.

Cur. Adv Vult.

Gunn Chit Tuan J.: Angel Department Stores Sdn. Bhd. (the defendant) applied by Summons-in-Chambers for an order to set aside a Writ of Summons and the service thereof on the ground that the time limited for appearance within eight days was irregular and did not comply with Order 12 rule 4 of the Rules of the High Court, 1980, which is as follows:–

"4. References in these rules to the time limited for appearing are references:–

(a) in the case of a Writ served within the local jurisdiction of each High Court in Malaya, to 8 days and

served outside such local jurisdiction but within the jurisdiction of Malaya, to 12 days after service of the writ (including the day of service) or, where that time has been extended by or by virtue of these rules, to that time as so extended; and

(b) in the case of a Writ served within Sarawak or Sabah, to 10 days after service of the Writ (including the day of service) or in the case of a defendant whose place of residence or if an incorporated society whose registered office of business is not within the Division or Residency in which is situated the Registry out of which the Writ of Summons was issued, 20 days after service of the Writ (including the day of service);

(c) ..."

It was, however, the contention of Mr. N.H. Wong, counsel for Seng Loong Trading Company (the plaintiff), that the time limited for appearing in the Writ of Summons was regular and he referred to Article 121 of the Federal Constitution in which it is stated that the judicial power of this country shall be vested in two High Courts of co-ordinate jurisdiction and status, namely, one in the States of Malaya which shall be known as the High Court in Malaya and one in the States of Sabah and Sarawak, which shall be known as the High Court in Borneo. He then referred to section 23 of the Courts of Judicature Act, 1964, concerning the general civil jurisdiction of the High Court which provides that the High Court shall have jurisdiction to try all civil proceedings where:

"(a) the cause of action arose, or

(b) the defendant or one of several defendants resides or has his place of business, or

(c) the facts on which the proceedings are based exist or are alleged to have occurred, or

(d) any land the ownership of which is disputed is situated,

within the local jurisdiction of the Court ..."

Counsel then referred to the definition of the expression "local jurisdiction" in section 3 of the said Act which states that "local jurisdiction" means:—

"(a) in the case of the High Court in Malaya, the territory comprised in the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu; and

(b) in the case of the High Court in Borneo, the territory comprised in the Borneo States, namely, Sabah and Sarawak.

including, in either case, the territorial waters and the air space above those States and the territorial waters."

It was therefore the submission of Mr. Wong that the expression "local jurisdiction" of each High Court in Malaya in Order 12 rule 4(a) of the Rules of the High Court, 1980, means the territory comprised in the States of Malaya including in this case the State of Penang where the defendant is carrying on its principal business on the 1st and 2nd Floor, Chowrasta Market, Penang Road, with its registered address at No. 62B & C, Seang Tek Road, Penang.

With respect, I did not agree with the above contention of counsel. To start with the expression "local jurisdiction" is not defined in Order 12 rule 4 and one cannot for the purpose of construing the provisions of the Rules of the High Court, 1980, refer to the meaning assigned to that expression in the Courts of Judicature Act, 1964. It is pointed out in *Mallal's* Supreme Court Practice (2nd edn.) at 72 that the provisions of Order 12 rule 4 of the Rules of the High Court in Malaysia take into account the presence of a Registry in each state and make allowance for the possible delay in postal deliveries. For that reason the figure "eight" in the Writ of summons (Form 2) wherever it appears must be amended to "twelve" if a West Malaysia writ is for service in another state in West Malaysia and to "ten" and "twenty" as the case may be in a Writ issued either in Sabah or Sarawak. In the case of the High Court of Malaya at Kuala Lumpur it follows, in my judgment, that for purposes of Order 12 rule 4 of the Rules of the High Court, 1980, the expression "local jurisdiction" of this High Court in Malaya means the territory comprised in the State of Selangor and the Federal Territory of Kuala Lumpur, and cannot include the other States of West Malaysia. In the circumstances, I therefore set aside the said Writ and the service thereof with liberty to the plaintiff to file a fresh suit.

Order accordingly.

Solicitors: *Lee & Wong; Ang Tan & Co.; P.C. Low & Co.*